

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

	:	MDL NO. 1355
	:	
IN RE: PROPULSID	:	SECTION: L
 PRODUCTS LIABILITY LITIGATION	:	
	:	JUDGE FALLON
	:	MAG. JUDGE AFRICK
THIS DOCUMENT RELATES TO ALL CASES	:	
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**JOINT REPORT NO. 9 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 9.

I. Master Complaint/Answer - (PTO 2 - VI(B))

On July 5, 2001 the PLC delivered to DLC a draft Master Class Action Complaint. The timing for the filing of a Master Complaint and Answer is addressed by the pending Motion to Enter Scheduling Order for Motion and Hearing on Class Certification that was filed on July 18, 2001. (See paragraph X below). PLC objects to the contentions and timing of DLC's proposed certification hearing and has filed a brief in opposition. The parties will be prepared to discuss this in more detail at the August 3, 2001 Monthly Status Conference.

II. Update of Rolling Document Production and Electronic Document Production - (PTO 2 - IX)

DLC advises that the last production of documents was rolled out on June 29, 2001, with the delivery of 423,000 pages on CD-ROM. With this production, the total number of pages produced on CD-ROM so far is 3,467,456.

PLC and DLC have had continued discussions regarding the production of electronic data. PLC maintains that the production of electronic data including the initial databases is overdue. DLC maintains that it anticipates delivering the following databases by Labor Day, subject to an agreement or Order providing for the allocation of costs and expenses associated with the production of electronic data:

1. CMF (Call Center)
2. CRF (Clinical Trials)
3. TMF (Clinical Trials)
4. LMD (Literature, Links to Trials)
5. ARISg (Safety Database)

The parties will be prepared to discuss this in more detail at the August 3, 2001 Monthly Status Conference.

The parties are continuing discussions regarding a nominee for Special Master as required by Section H(3) of PTO 10.

PLC and DLC have agreed to a procedure for imaging hard drives in Beerse, Belgium, which included an instructional text and certification language providing a method for the procedure and an assurance of compliance.

PLC has written defense counsel and requested a joint inspection (MDL and state court case counsel) of Janssen's computer system to view the various data bases that are presently the subject of discovery and in line for production. PLC desires to view the data bases in operation so that it can understand screen shots and how relationships, drop down screens, etc. work on a on-going day-to-day basis. DLC objects to an on site inspection, expecting that other satisfactory arrangements can be made. The parties will be prepared to discuss this in more detail at the August 3, 2001 Monthly Status Conference.

III. Electronic Service/Verilaw - (PTO 2-IV(C)(C))

The parties have agreed to additional security measures requested by Verilaw for documents that are served electronically. Verilaw is in the process of implementing the upgrade. These measures will be implemented soon.

IV. State Liaison Counsel - (Minute Entry, November 16, 2000)

At the invitation of the Court, Mr. David Jacoby will attend the August 3, 2001 Monthly Status Conference to report on the status of Propulsid litigation in New Jersey. The Court has scheduled a meeting with the State Liaison Committee to be held following the August 3, 2001 Monthly Status Conference.

V. Patient Profile Form and Authorization

As of Friday, July 27, 2001, defendants have received 421 Patient Profile Forms (PPFs). Sixty-eight (68) are currently overdue and 49 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue. As the Court had been previously informed, DLC advised that defendants intended to present for dismissal at the August 3, 2001

Monthly Status Conference, the names of plaintiffs who have failed to respond to follow-up requests for completion of PPFs. Three Motions have been filed in this regard, to dismiss the claims of Mabel Charles, Lucius Hinkle, Calvin Aubert, Charlar P. Brewer, James Carter, Katherine Clayton, Ta Lacey Clayton, Tracy Clayton, Angelique Mallery, Marquell Mitchell, Albert Williams, Sr., Della Williams, Ernestine Williams, Katia Williams, Khymest Terre Williams, Lisa Lynette Williams, Shelton Williams, Jr., Shelton Williams, Sr. and Tyler James Williams. Defendants have since withdrawn the Motions to Dismiss the Claims of Brewer and Mallery.

DLC and PLC are discussing some alleged general deficiencies in some of the responses contained in the PPFs. Parties will be prepared to discuss this in more detail at the August 3, 2001 Monthly Status Conference.

VI. Subpoena to FDA

On July 13, 2001, PLC filed a Motion to Compel Production of Documents from FDA arising out of a subpoena duces tecum that had earlier been served on the FDA with the return date of March 30, 2001. In response to the subpoena, the FDA produced on May 30, 2001 approximately 5,000 pages of documents and advised that an additional 11 cartons were to be produced. Since filing the Motion, the ensuing discussions with FDA indicate that the FDA would complete the production by the end of August, 2001. Correspondence received from Paige Taylor from the FDA dated July 18, 2001 is attached, which identifies the individuals within the FDA who are responsible for gathering the documents subpoenaed. Additional correspondence received from Paige Taylor from the FDA dated July 26, 2001 is attached, which outlines the production schedule for the remaining FDA documents. Under those circumstances, PLC advised the FDA that it would not pursue the Motion to Compel at the August 3, 2001 Monthly

Status Conference pending completion of the document production by the end of August.

VII. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

VIII. Ongoing Studies/Subpoena to BevGlen

PLC issued a subpoena duces tecum to BevGlen Medical Systems Corporation of Delaware, through their Authorized Agent for Service of Process, United Corporation Services, 15 East North Street, Dover, Delaware 19901. The subpoena requested, among other things, production of studies regarding Cisapride, on July 27, 2001. PLC and DLC have agreed to discuss the production of materials responsive to this request, the relevance of the materials and any confidentiality issues. This subpoena also raises the issue of the production of scientific data involved in an ongoing study, which has been the subject of prior discussions between PLC and DLC and which has been periodically reported to the Court. The parties will attempt to negotiate a recommended order providing for the scientific studies that may not yet be completed, studies which are completed, and the preservation of all data, including raw data, utilized in connection with all studies.

IX. Third Party Subpoena Duces Tecum Issued by PSC

PLC and DLC have been in negotiations in an attempt to coordinate production responses from third party subpoenas. PLC and DLC are discussing the creation of a protocol to enable efficient and economical production of information received from third parties to which subpoenas are issued. In this context, on July 6, 2001, DLC forwarded a draft Pretrial Order providing for production of documents from third parties. On July 18, 2001, PLC responded with a redraft of a Pretrial Order for third party

subpoenas. PLC is waiting on a reply from DLC. PLC and DLC continue to discuss refining this Order for presentation to the Court and will be prepared to discuss the remaining issues surrounding the preparation of such an Order.

X. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification.

Defendants filed the above Motion on July 18, 2001, and on July 30, 2001 the Plaintiffs' Steering Committee filed a Memorandum in response and in opposition. Counsel will be prepared to make brief oral argument and answer questions from the Court.

XI. Tolling Agreement/Master Complaint of Louisiana Propulsid Claimants

By agreement of the parties, plaintiffs filed a Master Complaint of Louisiana Propulsid Claimants and a First Supplemental and Amended Master Complaint of Louisiana Propulsid Claimants on July 13, 2001 and July 16, 2001, respectively. The purpose of filing these Complaints was to provide a procedural mechanism to interrupt prescription. All of the defendants' rights are otherwise reserved and not waived. The complaint, as amended will be placed on the Court's inactive docket pending further orders of the Court. No discovery shall take place as regards these plaintiffs, who, while on the inactive docket, are not governed by Pretrial Order No. 9. In the meantime, the defendants will raise their objection at the August 3, 2001 Monthly Status Conference to the naming of "John Doe" and "Jane Doe" plaintiffs in the aforementioned Complaints.

XII. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On May 8, 2001, PLC served a copy of Plaintiffs Merits Request for Production of Documents

Propounded to Defendants - Set No. 2. This Request sought production of documents regarding Norcisapride. On July 20, 2001, defendants served their response and objections. Defendants are prepared to produce some materials reserving their relevancy objections and plan on continued discussions with PLC to address issues of confidentiality and burdensomeness. The parties will be prepared to discuss these matters at the August 3, 2001 Monthly Status Conference.

On May 22, 2001, defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. One: Ongoing Studies. On July 9, 2001, counsel representing the Plaintiffs' Steering Committee filed a response. No response has been forthcoming from other plaintiff counsel, and in compliance with Local Rule 37.1 and Pretrial Order No. 2, Paragraph VIII(a), DLC will schedule a telephone conference call for plaintiff counsel who have not responded.

On June 5, 2001, defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. Two. Defendants are awaiting response.

XIII. Agenda

A proposed Agenda for the August 3, 2001 Monthly Status Conference is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 9 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this 1st day of August, 2001.

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Monthly Status Conference August 3, 2001 9:00 a.m.
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AGENDA

Current Matters:

1. Master Complaint/Answer
2. Update of Rolling Document Production and Electronic Document Production
3. Electronic Service/Verilaw
4. State Liaison Counsel
5. Patient Profile Form and Authorization
6. Subpoena to FDA

7. Service List of Attorneys
8. Ongoing Studies/Subpoena to BevGlen
9. Third Party Subpoena Duces Tecum Issued by PSC
10. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification
11. Tolling Agreement/Master Complaint of Louisiana Propulsid Claimants
12. Plaintiffs' and Defendants' Respective Requests for Production of Documents